

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 765 OF 2003
IN
SECOND APPEAL NO. 463 of 2003**

Smt.Kusum Ramanlal Vora
and others. ... Applicants.

V/s.

Manikchand Devchand Phade ... Respondent.

G.S.Godbole for the applicants.

None for the respondent.

CORAM : V.C.DAGA, J.

DATED : 27th March 2006.

P.C. :

Heard Mr.Godbole, learned counsel for the applicants/review petitioners. None for the respondent in spite of service. Perused review petition.

2. By this application, the applicant/ original appellants have sought review of the order dated 10th July, 2003 passed in Second Appeal No.463/2003.

3. Mr.Godbole in his oral submission made solitary submission that the application for additional evidence could not be brought to the notice of the Court, hence, order dated 10th July, 2003 needs to be reviewed.

4. Mr.Godbole did not argue any of the grounds which have been raised in the memo of review petition. However, I propose to make a brief reference to the same, so as to clear the clouds sought to be raised in the review petition. The review petition goes on to say that when the order under review was passed, Mr.Godbole, Advocate was busy in another Court. That his junior Mr.D.J.Deshmukh, Advocate prayed for adjournment; which this Court ought to have granted. That Mr.Deshmukh, junior advocate was made to argue the appeal. That he could not point out relevant material. Consequently, appeal came to be dismissed in limine without adequate opportunity of hearing to the appellants. Mr.Godbole, as stated hereinabove, did not pursue this line of submission.

Consideration :

5. The oral submission advanced by Mr.Godbole (not to be found in the memo of review petition) that application for additional evidence could not be brought to the notice of this Court holds no

water for want of pleadings. This submission is also contrary to the pleadings made in the review petition. The review petition goes on to say that the Court without considering the application for additional evidence has disposed of the second appeal, meaning thereby the additional evidence was brought to the notice of the Court but the Court did not consider the same. This line of submission is again not pursued by Mr. Godbole. Thus, oral submission made is just contrary to the pleadings and needs outright rejection.

6. The order sought to be reviewed dated 10th July, 2003 is, obviously, more than three years old. This review petition is heard almost after lapse of three years. Every month hundreds of cases are being heard and disposed of. Thousands of cases pass through the hands of the Court every year. It is, therefore, humanly impossible for any Judge to remember a particular case unless that particular case was a class by itself.

7. In the above circumstances, after lapse of about three years, it is not possible to remember actually what had transpired when the appeal was heard for admission.

8. Be that as it may, let me turn to the case at hand to find out from record who must have argued this matter at the time of admission.

9. Record shows that Mr.Godbole appeared for the appellants. Had it been wrongly recorded, necessary steps should have been taken either by the appellants or Mr.Godbole, Advocate saying that his appearance was wrongly recorded. He could have got the appearance of the parties corrected. Whenever wrong appearances are recorded or shown, parties do move preciape for speaking to minutes to get the appearance corrected. No such motion/application was taken out by anybody to get the appearance shown in the order sheet corrected.

10. The record does not suggests or depicts appearance of Shri D.J.Deshmukh, Advocate. No attempt was made to get his appearance recorded either by him or by the appellants.

11. Now let me turn to the review petition. It is affirmed by one Shri Dilip Kevalchand Vora; who is not party to the litigation. Not a single appellant has signed review petition. Mr.Dilip Vora, prior to this review petition, did not affirm any of the applications in this proceeding. As such it is clear that the person affirming the affidavit or verifying pleadings is a stranger to the litigation. He does not say that he was present in the Court when the appeal was heard. He does not affirm review petition from his personal knowledge. He also does not disclose the source of his information. The affirmation or verification is, absolutely, defective. It is not according to

the law laid down by the Apex Court in the case of *Barium Chemicals Ltd. v. Company Law Board*, AIR 1967 SC 295 or by this Court in the case of *M/s.Shamsunder Rajkumar v. Bharat Oil Mills*, AIR 1964 Bom 38. The same is, therefore, liable to be rejected.

12. Neither Mr.Godbole nor Mr.Deshmukh, learned counsel have filed affidavit on record in support of the allegations made in the review petition which are little serious. Lapse on the part of the Advocates is also serious. Judicial notice of newly developed trend amongst the members of the Bar can conveniently be taken note of. Whenever matter is decided adversely; tendency is to blame the concerned Judge rather than taking blame on oneself. Whenever, defective pleadings or wrong statements are pointed out by the Court, attempt is to shift the blame on the junior advocate. This tendency needs to be arrested.

13. In the totality of the above circumstances and material available on record, the review petitioners could not make out any case for review of the order. Not a single ground warranting review of the order in question is either argued or made out.

14. In the result, review petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)